

Deposition Designations for:

RICHARD FINKE
May 13, 2009

Deposition Designation Key

CI = Certain insurers (green)

**CNA = Continental Cas. Co &
Continental Ins. Co. (red)**

PP's = Plan Proponents (blue)

Obj: = Objection

Ctr = Counter Designation

R = Relevance

BE = Best Evidence

F = Foundation

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

X

In Re: Chapter 11

Case No.

01-01139 JKF

W.R. Grace & Co., et al.,

Debtors. (Jointly
Administered)

X

* * * CONFIDENTIAL * * *

— — —
May 13, 2009

— — —

DEPOSITION of RICHARD FINKE, held

at the offices of Kirkland & Ellis, 655

Fifteenth Street, N.W., Washington, DC,

commencing at 9:32 A.M., on the above

date, before Lisa Lynch, a Registered

Merit Reporter, New Jersey Certified Court

Reporter, License No. XI00825, and

Certified Realtime Reporter

— — —

MAGNA LEGAL SERVICES, LLP

7 Penn Center, 8th Floor
1635 Market Street
Philadelphia, PA 19103

Key

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4 (Pages 10 to 13)

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1 DEPOSITION SUPPORT INDEX
2
3

4 Direction to Witness Not To Answer

5 Page Line Page Line
30 2 37 12
37 17 39 8
39 15 369 1

6 Request For Production of Documents

7 Page Line Page Line
(None)

8 Stipulations

9 Page Line Page Line
(None)

10 Questions Marked

11 Page Line Page Line
(None)

12 - - -

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C1
1 RICHARD FINKE,
2 having been sworn by the Notary
3 Public of the States of New York
4 and New Jersey, was examined and
5 testified as follows:
67 EXAMINATION BY
8 MR. BROWN:9 Q. Good morning, Mr. Finke.
10 My name is Michael Brown. I represent One
11 Beacon, Seaton, Geico and Republic for the
12 objecting insurance companies in the Grace
13 bankruptcy. You've been deposed several
14 times before, correct?

15 A. Yes, I have.

16 Q. Okay. So we can dispense
17 with the formalities of what a
18 deposition's all about?

19 A. Yes, we can.

20 Q. Okay.

21 MS. HARDING: Michael,
22 would you mind if I made a quick
23 statement on the record?

24 MR. BROWN: Sure.

C1

1

2 MS. HARDING: I just wanted
3 to make a statement on the record
4 that the debtors have designated
5 Mr. Finke to answer certain
6 appropriate questions related to
7 certain 30(b)(6) topics.8 As we've indicated, Mr.
9 Finke will be available for seven
10 hours today. We've also designated
11 Mr. Hughes and Mr. LaForce to
12 answer other 30(b)(6) topic
13 questions. We are hoping and
14 expecting that the parties seeking
15 to ask questions have coordinated
16 so that we can end in seven hours
17 and we think it's a reasonable
18 expectation.19 The debtors have reviewed
20 the deposition of Mr. Lockwood and
21 agree, in essence, with Mr.
22 Lockwood's answers with respect to
23 how the Plan operates and so we
24 think and are very hopeful that
there will not be a need to go

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1

2 further than seven hours to get to
3 the appropriate inquiry as to how
4 the Plan operates. So I just
5 wanted to get that on the record.6 MR. BROWN: Okay.
7 Actually, that's helpful. Maybe I
8 could follow up with a question for
9 Mr. Finke.10 Q. Mr. Finke, have you
11 reviewed Mr. Lockwood's Rule 30(b)(6)
12 deposition transcript?

13 A. Yes, I have.

14 Q. Okay. Is there anything
15 that you read in that transcript that you
16 disagreed with?

17 A. No, nothing of substance.

18 Q. Okay. How about anything
19 not of substance?20 A. There are a few occasions,
21 I think, where I either would have worded
22 something differently or where I think Mr.
23 Lockwood may have been either in error --
24 might have been in error depending on
whether he was -- depending on thePP's
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5 (Pages 14 to 17)

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1 context. Let me give you one example of
2 that.

3 Q. Sure.

4 A. He, I think, made a
5 statement at one point where he equated
6 asbestos in place coverage or insurance
7 coverage with the asbestos insurance
8 reimbursement agreements. I believe he
9 said he thought they were the same thing,
10 and perhaps in substance or in concept
11 they are. I'm not an insurance lawyer,
12 but I know that under the Plan
13 definitionally the definition of asbestos
14 (sic) in place insurance coverage
15 specifically excludes asbestos
16 reimbursement agreements from the
17 definition.

18 Q. Okay.

19 A. Which would suggest they
20 are not the same.

21 Q. All right. I'm going to
22 suggest that Miss Alcubes, or one of the
23 people whose issue that is, may want to
24 follow up with you on that point.

1 A. Sure.

2 Q. But let's pass on that.

3 Other than what you've just
4 described, is there anything else in Mr.
5 Lockwood's deposition transcript that the
6 debtors disagreed with?

7 A. Nothing that comes to
8 mind.

9 MR. BROWN: Okay. Let me
10 have the first exhibit marked, and
11 can we go off the record for a
12 second.

13 (Off the record.)

14 (Notice of Deposition of
15 Debtors Pursuant to Rule
16 30(b)(6) marked for identification
17 as Exhibit Finke-1.)

18 (Document entitled W.R.
19 Grace/Confirmation Hearing 30(b)(6)
20 Deposition Notice marked for
21 identification as Exhibit
22 Finke-2.)

23 BY MR. BROWN:

24 Q. Mr. Finke, I'm going to put

1 before you two exhibits marked -- we're
2 using the term Finke 30(b)(6) 1 and Finke
3 30(b)(6) 2. For shorthand during the
4 deposition I'll just refer to them as
5 Finke-1 and Finke-2. Could you identify
6 Finke-1 for me, please?

7 A. It is a Notice of
8 Deposition of Debtors Pursuant to Rule
9 30(b)(6) served by One Beacon, Seaton,
10 Geico and Columbia.

11 Q. Going forward, it would be
12 more accurate to refer to Columbia as
13 Republic. I know it says Columbia there.
14 The date on here is April 28th, 2009 and
15 the site is Drinker Biddle & Reath's
16 offices but we obviously changed those by
17 agreement after this was scheduled.

18 Is it your understanding that
19 you're appearing here today in response to
20 this Rule 30(b)(6) notice?

21 A. Yes.

22 Q. And there were several
23 others served on you as well?

24 A. Correct.

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1 Q. Correct, all right.

2 If you look at what's been marked
3 as Finke-2, can you identify that for
4 me?

5 A. It is a chart 18 pages long
6 entitled W.R. Grace/Confirmation Hearing
7 30(b)(6) Deposition Notice Witness
8 Designations.

9 Q. Okay. And is it your
10 understanding that this document was
11 prepared by your counsel?

12 A. Yes, that's my
13 understanding.

14 Q. And have you seen it before
15 today?

16 A. Yes.

17 Q. Okay. And am I correct
18 that it basically lists all the various
19 topics from all the 30(b)(6) notices that
20 were served on Grace and then designates
21 one of, I believe, three individuals to
22 testify about the various topics?

23 A. I would agree that it
24 includes all 30(b)(6) notices that have

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6 (Pages 18 to 21)

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1 been served as of the time that the chart
2 was created.

3 MS. HARDING: And I just
4 want to just object to the extent
5 that Exhibit 2 does not include the
6 cover letter that accompanied
7 Attachment A which also set out our
8 objections with respect to the
9 30(b)(6) notices.

10 I have no objection to him
11 answering questions about it; I
12 just wanted to make clear on the
13 record that there was a cover
14 letter that accompanied that.

15 MR. COHN: Which I actually
16 have but I didn't --

17 MR. BROWN: Can we just go
18 off the record a second?

19 (Off the record.)

20 BY MR. BROWN:

21 **Q. Mr. Finke, when we were
22 just off the record, we were discussing
23 another document, a copy of which I do not
24 have and apparently no one else does,**

1 the road of having all the people
2 in this room ask questions about
3 negotiations and draft documents
4 only to draw objections and
5 instructions not to answer.

6 Can we have that same
7 arrangement for this deposition
8 with the understanding that if
9 there subsequently is a ruling by a
10 court that entitles us to discovery
11 on those subjects that the witness
12 would be recalled for that purpose?

13 MS. HARDING: Subject to
14 Judge Fitzgerald ordering the
15 debtors to submit and answer
16 questions to those, then we can
17 have that agreement, yes.

18 MR. COHN: Just for my
19 clarity, in all of these
20 depositions we're talking about the
21 relevance objection instruction
22 that was asserted at Lockwood's
23 deposition that I clarified on the
24 record?

1 which was described as being objections to
2 the various 30(b)(6) notices that were
3 served on the debtors. Are you familiar
4 with the document that I'm describing?

5 A. No, I don't think I am.

6 **Q. Okay. In any event, you're
7 appearing here today pursuant to the Rule
8 30(b)(6) notices for the topics for which
9 you've been designated on Finke-2 and
10 subject to whatever objections were
11 asserted by the debtors, correct?**

12 A. Correct.

13 MR. BROWN: Okay. We don't
14 have a document, but my
15 recollection of the objections was
16 that there was an objection to this
17 witness testifying about any Plan
18 negotiations or draft Plan
19 documents. Is that right, Barbara?

20 MS. HARDING: That's
21 correct.

22 MR. BROWN: Okay. At Mr.
23 Lockwood's deposition we reached an
24 agreement that we wouldn't go down

1 MR. BROWN: That is
2 correct, and I believe the document
3 that we don't have, the objections
4 to the 30(b)(6)'s, if I recall
5 correctly, had a paragraph setting
6 forth that objection and a number
7 of different decisions by Judge
8 Fitzgerald in other cases.

9 MS. HARDING: That's
10 correct, and it relates -- our
11 objection relates to the -- to the
12 relevance to the extent that the
13 questions seek information relating
14 to settlement negotiations,
15 drafting --

16 MR. COHN: The
17 clarification that I thought that I
18 made earlier that I'll make clear
19 is still the clarification that
20 this is a relevance objection, or
21 are you asserting a privilege?

22 MS. HARDING: Well, I
23 disagree with that
24 characterization. The objection is

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1 set out in our official objection
 2 to the 30(b)(6) notices which is
 3 filed on record. It includes
 4 attorney-client privilege, it
 5 includes work product, it includes
 6 joint interest privilege. I don't
 7 have it in front of me so I can't
 8 recite them, but it includes much
 9 more than relevance so --

10 MR. COHN: Just to be
 11 clear, because --

12 MS. HARDING: With respect
 13 to negotiations, you can -- there
 14 will be other objections other than
 15 just relevance, so --

16 MR. COHN: Well, but my
 17 understanding was there was a
 18 blanket instruction not to answer
 19 without any attempt to parse
 20 through potential privilege
 21 objections on the basis of a
 22 blanket relevance objection. Am I
 23 missing something?

24 MS. HARDING: I don't

1 negotiations of the Plan or the
 2 draft Plan documents that that will
 3 draw an instruction not to
 4 answer.

5 MS. HARDING: That's
 6 correct.

7 MR. BROWN: Okay, thank
 8 you.

9 (SEC Form 8-K marked for
 10 identification as Exhibit
 11 Finke-3.)

12 BY MR. BROWN:

13 Q. Mr. Finke, you have before
 14 you now another document that has been
 15 marked for this deposition as Finke-3.
 16 You'll note that there is a prior
 17 deposition exhibit number on there, Number
 18 12, and that was from your deposition as a
 19 fact witness. Do you see that?

20 A. Yes, I do.

21 Q. We obviously had some
 22 questioning about this at your prior
 23 deposition but that was not in your
 24 capacity as a designee for Grace and I

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1 disagree with that, but I think
 2 that in light of the blanket
 3 relevance objection with respect to
 4 negotiations that there was that
 5 agreement reached. That doesn't
 6 mean that with respect to
 7 everything that might fall under
 8 negotiations that there wouldn't be
 9 other objections as well.

10 MR. COHN: I'm not
 11 suggesting that --

12 MS. HARDING: Okay.

13 MR. COHN: -- if there's a
 14 valid privilege objection here that
 15 you've somehow waived your right to
 16 assert that by asserting a blanket
 17 objection, but my understanding is
 18 we didn't start down that path
 19 because there was a relevance
 20 objection.

21 I'm sorry, Michael.

22 MR. BROWN: That's all
 23 right. Suffice it to say that if
 24 we ask questions concerning the

1 have some additional questions. So the
 2 first one is: Can you identify the
 3 document?

4 A. Yes. This is a Form 8-K
 5 report that was filed by W.R. Grace with
 6 the Securities and Exchange Commission on
 7 April 6, 2008.

8 Q. And the document has a
 9 couple of attachments, correct?

10 A. Yes.

11 Q. What are they?

12 A. Let's see. The first
 13 attachment is, in essence, a press release
 14 in which Grace announced the -- its
 15 settlement of asbestos personal injury
 16 claims in the context of the Chapter 11
 17 cases and the second attachment is a term
 18 sheet for resolution of asbestos personal
 19 injury claims.

20 Q. And was the press release
 21 actually issued?

22 A. I do not know.

23 Q. Okay. If it was issued,
 24 was it issued on or about the time that

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1 this document was filed, to your
 2 knowledge?

3 A. Yes.

4 Q. Let's focus on the term
 5 sheet. Who are the parties to the term
 6 sheet?

7 A. The debtors, the Official
 8 Equity Security Committee, the Official
 9 Committee of Personal Injury Claimants and
 10 the Future Claimants' Representative.

11 Q. And what is the date of the
 12 term sheet?

13 A. April 6, 2008.

14 Q. I want you to focus now on
 15 the period -- for purposes of my next
 16 series of questions -- the period prior to
 17 April 6, 2008. And am I correct that
 18 prior to April 6, 2008 that Grace did not
 19 consult with any of its insurers
 20 concerning the terms that appear in this
 21 term sheet?

22 MS. HARDING: I'm going to
 23 object to the extent that it seems
 24 to me that this is going right into

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1 the issue of negotiations and
 2 settlement negotiations with
 3 respect to the Plan. I thought we
 4 weren't going to go there.

5 MR. COHN: I think there
 6 was no -- if there was no contact,
 7 how are we going into that?

8 MR. BROWN: Yeah, we ought
 9 to see what his answer is. I'm not
 10 asking him about negotiations with
 11 the parties that signed the term
 12 sheet. I'm asking about whether
 13 Grace consulted with any of its
 14 insurers concerning the terms of
 15 the term sheet prior to executing
 16 it.

17 MS. HARDING: First of all,
 18 I'm going to object. I think that
 19 the -- this is not a topic of the
 20 30(b)(6) notice and we're prepared
 21 to answer questions about how the
 22 Plan operates. I think that that's
 23 what Judge Fitzgerald would
 24 instruct the debtors to do and

8 (Pages 26 to 29)

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1 we're here to do that.

2 We're not here to talk
 3 about and have the witness testify
 4 about how it was negotiated, how it
 5 came about, the prior drafts, who
 6 was consulted, who wasn't
 7 consulted, and all that. I don't
 8 think that's the proper scope of
 9 this deposition.

10 MR. BROWN: I'm not asking
 11 who was consulted. I'm asking him
 12 whether the insurers -- I'm asking
 13 him to affirm that the insurers
 14 were not consulted.

15 MS. HARDING: Right. But
 16 the problem with that is if we
 17 answer that question, then we have
 18 opened the door to answering that
 19 question with respect to any party
 20 and I think that that's not the
 21 proper subject of this
 22 deposition.

23 MR. BROWN: I can assure
 24 you the only one I'm going to ask

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1 about is the insurers.

2 MS. HARDING: Well, I
 3 understand that you are, but I
 4 don't want to spend any of the time
 5 of the seven hours talking about
 6 any of the negotiations or what led
 7 up to the drafting of the document.
 8 We didn't agree to that. It wasn't
 9 asked for in the 30(b)(6) topics
 10 with respect to how the term sheet
 11 came about and so I think that
 12 we've got an agreement.

13 If you all want to seek an
 14 order compelling us to answer those
 15 kinds of questions, then I think
 16 you should do that. Otherwise,
 17 we're here to talk about how the
 18 Plan operates. So --

19 MR. BROWN: I thought you
 20 just --

21 MS. HARDING: That's what
 22 he's here to answer questions
 23 about.

24 MR. BROWN: Are you

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1 instructing him not to answer?	1 relevance?
2 MS. HARDING: I'm 3 instructing him not to answer 4 because I think it leads into a 5 series of questions that we all 6 have already agreed is not proper 7 under the current law.	2 3 MS. HARDING: I think 4 that's an appropriate scope of the objection.
8 MR. COHN: Oh, wait, wait, 9 wait, wait, wait.	5 MR. COHN: On the basis of 6 relevance?
10 MR. BROWN: I'm not 11 sure --	7 MS. HARDING: On the basis 8 of all of the objections that were 9 stated in our objection to the 10 30(b)(6) notice --
12 MS. HARDING: Actually, I 13 understand that you don't agree 14 with the law, but we've agreed for 15 purposes of this deposition that we 16 weren't going to do that.	11 MR. COHN: No, I want you 12 to state on the record --
17 MR. BROWN: I don't know 18 that we agreed to any such thing. 19 I asked the same series of 20 questions of Mr. Lockwood. I don't 21 know if you were at his deposition 22 or not --	13 MS. HARDING: Let me 14 finish. 15 MR. COHN: -- here and now 16 what the basis for a yes or no 17 question of whether or not people 18 were consulted. If there was no 19 communication, there's no arguable 20 privilege and I want the basis now 21 because I think we are going to 22 litigate this.
23 MS. HARDING: I was.	23 MS. HARDING: Well, I 24 think --
MR. BROWN: -- but he	Page 33
Page 31	
1 answered those questions and he 2 left open in his answers about 3 whether Grace had discussed with 4 its insurers these topics and 5 that's why I'm asking these 6 questions. It was perfectly fine 7 when I asked them of Mr. Lockwood; 8 he answered them and so should this 9 witness.	1 MR. BROWN: I think I have 2 the floor on this, but thank you, 3 Jack.
10 MS. HARDING: Well, I 11 believe that I objected and I 12 wasn't the person defending Mr. 13 Lockwood. And Mr. Lockwood -- 14 that's between him and his counsel. 15 I'm Mr. Finke's counsel. I'm 16 instructing Mr. Finke not to answer 17 questions relating to how the 18 settlement -- how the term sheet, 19 the Plan or any of the documents 20 related to it were drafted or put 21 together and who was consulted and 22 who wasn't consulted and how that 23 came about.	4 I think we have a 5 disconnect between what constitutes 6 negotiations. I'm not asking him 7 about how this was negotiated 8 between these parties. I 9 understand your position on that. 10 I'm simply asking whether Grace 11 consulted with its insurers with 12 regard to any term that appears in 13 the term sheet prior to executing 14 it on April 6, 2008. I don't think 15 that gets into negotiations at all. 16 In point of fact, I suspect he's 17 going to say no, in which case it 18 doesn't involve negotiations at 19 all.
24 MR. COHN: On the basis of	20 MS. HARDING: Well, I 21 suggest this: I think that the 22 question "did you negotiate with 23 anyone" gets into that question.
MR. BROWN: That wasn't the	

pp's
ctr

1 question.

2 MS. HARDING: Well, by
3 asking him -- I think it does. I
4 think we disagree about that. I
5 think why don't we move forward.
6 At a break I'm happy to talk about
7 it further but right now I'm
8 instructing him not to answer the
9 questions.

10 MR. BROWN: Well, I'll ask
11 a series --

12 MR. LEWIS: Hold on just a
13 second. My name is Tom Lewis. I
14 represent the Libby claimants, and
15 I've never seen a deposition like
16 this. I'm in practice 30 some
17 years.

18 I thought the examiner
19 makes a question and if there's an
20 objection, the objection is stated
21 clearly as to that particular
22 question and we don't sit here and
23 debate for 15 or 20 minutes whether
24 the question should be answered.

1 under 408. The objection
2 relates -- the rules of the
3 bankruptcy law do not require the
4 debtors to answer questions
5 relating to Plan negotiations and
6 settlement with respect to their
7 Plan and attorney-client privilege,
8 work product and joint interest
9 privilege.

10 MR. BROWN: Okay.

11 MR. COHN: Wait, I'm sorry.
12 I don't mean to -- I would like to
13 know with whom you assert a common
14 interest exists.

15 MS. HARDING: You know
16 what? My objection's on the record
17 and I'm not stating any more. I've
18 instructed the witness not to
19 answer and I think we should move
20 forward.

21 MR. BROWN: I think we
22 should, too, and I'm going to say
23 for purposes of stating your
24 objections to this series of

1 I think we should proceed
2 in a proper question and answer
3 proceeding here or we're never
4 going to get done and we're going
5 to have an impossible record.

6 So I object to the form of
7 the examination and the failure of
8 counsel for this witness to make a
9 proper objection on the record of
10 this deposition and I join in the
11 objection that this gentleman to my
12 right --

13 MR. COHN: Mr. Cohn.

14 MR. LEWIS: Thank you.

15 MS. HARDING: I think I've
16 stated the objection very clearly
17 and I instruct the witness not to
18 answer.

19 MR. LEWIS: I disagree with
20 that. I have not heard an
21 objection on the record of this
22 deposition.

23 MS. HARDING: The objection
24 is relevance. It's not relevant

1 questions let's just use the
2 shorthand, you know, same as before
3 so that we don't have to repeat
4 it.

5 BY MR. BROWN:

6 Q. Mr. Finke, I'm correct, am
7 I not, that prior to signing this term
8 sheet that we've been discussing that
9 Grace did not obtain the consent of any of
10 its insurers with respect to any of the
11 terms in the term sheet?

12 MS. HARDING: Same
13 objection. Instruct the witness
14 not to answer.

15 Q. Why did Grace exclude its
16 insurers?

17 MS. HARDING: Same
18 objection. Instruct the witness
19 not to answer.

20 Q. The initial Joint Plan, Mr.
21 Finke, was filed on September 19th, 2008,
22 correct?

23 A. I believe that's correct.

24 Q. Okay. And it included, did

Page 38	Page 40	
1 it not, the initial version of the 2 Asbestos PI Trust agreement and the 3 Asbestos PI TDP?	1 one for counsel. 2 MS. HARDING: Thank you. 3 (Exhibit 6 to Exhibit Book, 4 Asbestos Insurance Transfer 5 Agreement, marked for 6 identification as Exhibit 7 Finke-4.)	
4 MS. HARDING: I'm sorry, 5 Mike, can you repeat the question? 6 I'm sorry. 7 (The reporter reads the 8 pending question.)	8 BY MR. BROWN: 9 Q. Mr. Finke, you have before 10 you the document marked as Finke-4. Can 11 you identify the document for me, 12 please?	
9 MS. HARDING: And "it" was 10 the --	13 A. This is the proposed 14 asbestos transfer agreement also referred 15 to as Exhibit 6 to the Exhibit Book.	
11 MR. BROWN: The Plan. 12 MS. HARDING: Thank you, 13 okay.	16 Q. And what is your 17 understanding as to what this document 18 accomplishes?	
14 A. I don't recall which 15 documents were -- or exhibits were filed 16 with the Plan.	19 A. It is -- 20 MS. HARDING: Object to 21 form but -- 22 A. It is intended once it is 23 signed to transfer the asbestos insurance 24 rights to the Asbestos PI Trust.	
17 Q. Okay. Do you know whether 18 a press release was issued by Grace in 19 conjunction with the filing of the initial 20 Plan in September of 2008? 21 A. I don't recall.	27 C1 28 Q. Am I correct that in the 29 period between April 6, 2008 and September 30 19th, 2008 that the Plan proponents were 31 engaged in negotiating the terms of the 32 plan and drafting Plan documents? 33 A. Yes. 34 Q. Okay. In that time frame, 35 did Grace consult with any of its insurers 36 concerning the terms of the Joint Plan or 37 any of the Plan documents?	38 C1 39 Q. Okay. It has a -- it has a 40 few schedules. Look at Schedule 1, if you 41 will, and can you just identify what 42 Schedule 1 is? 43 A. Schedule 1 is a, I think, 44 20-page list of primary and excess 45 insurance policies that were or are 46 applicable to asbestos-related claims. 47 Q. And who is the insured 48 under those policies? 49 A. My understanding is that 50 the insured under the policies would be 51 one or more of the debtors in these 52 Chapter 11 cases. I don't recall if a 53 non-debtor affiliate would have been an 54 insured under any of these. I'd have to 55 check on that. 56 Q. By non-debtor affiliate, 57 who were you -- what entities or 58 individual are you thinking of? 59 A. Any Grace-affiliated entity 60 that is not a debtor. 61 Q. Okay. Who owns the 62 policies at this point?
41 C1 42 Q. Okay. Let's 43 mark another exhibit. The next 44 document we're going to mark is 45 Exhibit 6 to the Exhibit Book which 46 is the asbestos insurance transfer 47 agreement, and by convention I 48 brought one copy to be marked and	63 Page 41	

1 A. The debtors, or the -- I
2 should say the insurance contributors.

3 **Q. And that includes the
4 debtors?**

5 A. Debtors, and I believe the
6 non- -- I believe that the non-debtor
7 affiliates as well.

8 **Q. And I think they are
9 described somewhere. I think Mr. Lockwood
10 told us they were.**

11 A. Who are you referring to
12 when you say "they"?

13 **Q. The non-debtor affiliates.**

14 A. They are listed on an
15 exhibit.

16 **Q. You're right, there was
17 another exhibit that had that.**

18 A. The number of which I don't
19 recall offhand.

20 MS. ALCABES: Exhibit 16.

21 MR. BROWN: Oh, yes,
22 Exhibit 16.

23 **Q. Exhibit 16 to the Exhibit
24 Book?**

1 A. Correct.

2 MR. BROWN: Okay. I'm not
3 going to bother marking that.

4 **Q. If the Joint Plan is
5 confirmed and if the asbestos insurance
6 transfer agreement is executed as
7 contemplated by the Joint Plan, who are or
8 will be the insureds under the policies on
9 Schedule 1?**

10 MS. HARDING: Object to
11 form.

12 MR. LIESEMER: Join.

13 MS. HARDING: And also
14 object to the extent it calls for
15 speculation and a legal conclusion
16 as well.

17 A. My understanding is that
18 the named insureds would remain the same
19 as they currently are but that the rights
20 and interests in the policies themselves
21 are transferred to the PI Trust.

22 **Q. Who will be the owner of
23 the policies?**

24 MS. HARDING: Same

1 objections.

2 MR. LIESEMER: Object to
3 the form.

4 A. Again, I'm not an insurance
5 attorney but I believe -- since the
6 policies themselves are not being
7 assigned, I believe the ownership of the
8 policies does not change.

9 **Q. Are you familiar with the
10 basic responsibilities of an insured under
11 a general liability insurance policy?**

12 MR. LIESEMER: Object to
13 the form.

14 MS. HARDING: Object to the
15 form in terms of basic.

16 MR. BROWN: Well, let me
17 rephrase it.

18 **Q. Are you familiar with any
19 of the responsibilities of an insured
20 under a standard general liability
21 policy?**

22 MS. HARDING: Object to
23 form as to foundation but...

24 A. Yes.

1 **Q. Why don't you tell me which
2 ones you're familiar with?**

3 A. There's an obligation to
4 provide notice to the insurer of a claim
5 or an event that gives rise to a claim, an
6 obligation to provide relevant
7 documentation in support of a claim under
8 a policy. Offhand, I can't think of any
9 other specific obligations.

10 **Q. Have you heard of the duty
11 to cooperate under the policy?**

12 MS. HARDING: Object to
13 form. It assumes facts not in
14 evidence. With respect to what
15 policy? There are hundreds of
16 different insurance policies.

17 MR. BROWN: Yes, there are,
18 and I'm asking him just about
19 general provisions in a general
20 liability policy.

21 **Q. Are you familiar with the
22 concept of the duty to cooperate on the
23 part of an insured under a general
24 liability insurance policy?**

PP's
ctr

PP's
obj:
R;
DE;
F

PP's
ctr

PP's
obj:
R;
DE;
F

1 MS. HARDING: Again object
2 to form.

3 MR. LIESEMER: Join in that
4 objection.

5 MS. HARDING: And
6 foundation.

7 A. Yes.

8 Q. Okay. Are you familiar
9 with the right to defend or to associate
10 in the defense of claims under a general
11 liability policy?

12 MS. HARDING: Same
13 objection.

14 MR. LIESEMER: Object to
15 the form.

16 A. No, I'm not.

17 Q. Let me ask you a
18 different -- to your knowledge, does Grace
19 have any duties to the insurers listed on
20 Schedule 1 of the transfer agreement?

21 MS. HARDING: Object to the
22 form.

23 MR. LIESEMER: Object to
24 the form.

PP's
Obj:
R; BE; F

CNA

1 MR. BROWN: Okay.
2 MS. HARDING: I don't see
3 how he could answer that question
4 with respect to all policies.

5 A. The duties and obligations
6 are still owed to the insurance companies
7 since the Plan is intended to be
8 insurance-neutral. I don't have an answer
9 as to specific duties in terms of whether
10 the PI Trust has a given duty and
11 obligation or whether that given duty or
12 obligation remains with a Grace entity. I
13 think it would depend on the nature of the
14 duty or obligation.

15 Q. Okay. How about the duty
16 to cooperate in the defense of a claim?

17 MS. HARDING: Same
18 objection as before.

19 MR. LIESEMER: Join.

20 Q. Is that a duty that would
21 remain with the reorganized debtors or is
22 that a duty that would be assumed by the
23 Trust or both or something different?

24 A. I don't -- I don't know the

1 A. Does Grace currently have
2 any duties? Is that the question?

3 Q. Well, let's break it up.

4 Let's say: Did Grace pre-petition have
5 any duties to the insurers listed on
6 Schedule 1?

7 MS. HARDING: Same
8 objection.

9 A. Whatever -- whatever duties
10 and obligations are spelled out in the
11 policy, yes.

12 Q. Okay. If the Plan is
13 confirmed, what happens to those duties
14 and obligations?

15 MR. LIESEMER: Object to
16 the form.

17 MS. HARDING: Same
18 objection. And I am going to
19 object, I think, to -- are you --
20 what particular -- are you talking
21 about any particular policy or with
22 respect to all of the policies
23 listed in the exhibit or -- object
24 to the form.

PP's
Obj:
R; BE; F

1 CNA
2 answer to that because I'm not aware of
3 any attempt or effort by either Grace or
4 the ACC or the FCR to try to parse out
5 specific duties, obligations, et cetera
6 under the policies since it is the intent
7 of the joint co-proponents that the Plan
8 and the transfer of insurance rights be
9 insurance-neutral aside from, you know,
10 the fact of the assignment that it has
11 not -- that no one -- none of the
12 co-proponents have felt it necessary to
13 engage in that effort.

14 Q. Under the Joint Plan, is
15 the Asbestos PI Trust the successor to the
16 debtors with respect to asbestos-related
17 liabilities?

18 MR. LIESEMER: Object to
19 the form.

20 MS. HARDING: Object to
21 the form.

22 MR. BROWN: Let me rephrase
23 that.

24 Q. With respect to -- well,
back up.

PP's
Obj:
R;
BE;
F

Page 54

Page 56

PP's
ctr

1 A. No, no, I'm not aware of
 2 any general claims. I'm not aware of any
 3 claims that I could identify with respect
 4 to any given insurer.

PP's
obj:
R; BE;
F

5 MR. BROWN: Let's mark the
 6 next exhibit, which will be the
 7 Asbestos PI Trust agreement.

8 (Exhibit 2 to Exhibit Book,
 9 Asbestos PI Trust Agreement marked
 10 for identification as Exhibit
 11 Finke-6.)

12 (Exhibit 4 to Exhibit Book,
 13 Trust Distribution Procedures,
 14 marked for identification as
 15 Exhibit Finke-7.)

16 BY MR. BROWN:

17 Q. Okay. Mr. Finke, you have
 18 before you Exhibits 6 and 7. Exhibit 6 --
 19 well, why don't you tell me if you can
 20 identify both of those documents?

21 A. Exhibit 6 is the Asbestos
 22 PI Trust agreement. I should say the
 23 proposed Asbestos PI Trust agreement that
 24 is also known as Exhibit 2 to the Exhibit

1 Book. Finke Exhibit 7 is the Trust
 2 Distribution Procedures relevant to the
 3 Asbestos PI Trust and also known as
 4 Exhibit 4 to the Exhibit Book.

5 Q. Okay. What role, if any,
 6 do either of those two documents
 7 contemplate for Grace's insurers in the
 8 handling, resolution, settlement, defense
 9 of asbestos claims asserted against or
 10 submitted to the Trust?

11 MS. HARDING: Object to the
 12 form.

13 MR. LIESEMER: Object to
 14 the form.

15 MS. HARDING: Could you
 16 read back the question, please?

17 (The reporter reads the
 18 pending question.)

19 MS. HARDING: Okay, and I
 20 object to it as being overly broad
 21 with respect to Grace's insurers
 22 without reference to any particular
 23 insurer or policy. And, Michael,
 24 do you have -- are you asking him

1 to look at a specific provision of
 2 the policy or...

3 MR. BROWN: I'm just asking
 4 the question I asked.

5 A. I don't know the answer to
 6 your question. I'm not that familiar with
 7 the two agreements to know whether these
 8 two documents set forth the role of the
 9 asbestos insurers with respect to the
 10 handling, settlement, resolution, payment,
 11 et cetera of asbestos PI claims.

12 In general, the Plan includes the
 13 asbestos insurance coverage that is
 14 transferred to the Trust to be available
 15 to either pay asbestos PI claims or
 16 reimburse the PI Trust for its payment of
 17 claims. Sitting here today, I just -- I
 18 do not recall to what extent, if any,
 19 these two documents contain provisions
 20 that relate to that role.

21 Q. Let me broaden the scope of
 22 the question to not just these two
 23 documents but the Plan or any of the Plan
 24 documents. Would that change your

C1

answer?

1 MS. HARDING: Object to
 2 form.

3 MR. LIESEMER: Join.

4 A. I thought I just answered
 5 that question so maybe I don't understand
 6 the question.

7 Q. Well, my initial question
 8 to you focused on the two documents, the
 9 Trust agreement and the asbestos PI TDP.
 10 I'm asking the question more broadly now.

11 If you look at the Plan -- at all
 12 the Plan documents, do any of them
 13 contemplate any role for Grace's insurers
 14 in the handling, defense, resolution, of
 15 any asbestos PI claim submitted to the
 16 asbestos PI Trust for resolution?

17 MS. HARDING: Object to
 18 form. I think it's overly broad.
 19 And by Plan, do you mean all of the
 20 exhibits, including all of the
 21 documents and policies listed in
 22 exhibits?

23 MR. BROWN: I'm using the

PP's
obj:
R;
BE;
FPP's
obj:
R;
BE;
FPP's
ctr

1 term "Plan" and "Plan documents" as
2 defined in the Plan.

3 **MR. LIESEMER:** Object to
4 the form of the question.

5 A. The Plan certainly contains
6 provisions that posit a role for the
7 asbestos insurers to act as a source of
8 funds for payment of asbestos PI claims
9 and reimbursement of asbestos PI claims
10 paid by the Trust. In terms of the
11 insurers' role in handling or defense, et
12 cetera, of -- in connection with asbestos
13 PI claims, it is my understanding that the
14 insurers' role is whatever it is under the
15 policies and that that role is -- remains
16 the same notwithstanding the transfer of
17 the asbestos insurance rights to the
18 Trust.

19 **Q. Would you look at pages 43**
20 **and 44 of the Trust agreement, which I**
21 **think is 6.**

22 A. Yes.

23 MS. HARDING: 43, did you
24 say? What page?

1 MR. BROWN: Yes. Bear with
2 me one second here.

3 THE WITNESS: 43 and 44.

4 MR. BROWN: 43 and 44, yes.

5 **Q. Do you see on pages 43 and**
6 **44 there are some gentlemen listed as**
7 **members of the TAC?**

8 A. Yes.

9 **Q. Do you know any of those**
10 **gentlemen?**

11 A. I have met Mr. Cooney, Mr.
12 Rice and Mr. Weitz. I have not had much
13 contact with them, though.

14 **Q. What do you understand to**
15 **be their professional background, the**
16 **three you met?**

17 A. They are attorneys. They
18 have represented asbestos personal injury
19 plaintiffs in litigation against Grace and
20 other defendants.

21 **Q. Do you have any idea as to**
22 **how many claims each of these gentlemen's**
23 **firms has asserted on behalf of claimants**
24 **against Grace?**

1 **MR. LIESEMER:** Object to
2 the form of the question.

3 A. No.

4 MS. HARDING: You're asking
5 him personally? Is that what you
6 mean, personally? I mean, W.R. --
7 well, you ask him.

8 **Q. Do you know whether --**
9 **let's try it a different way.**

10 **Mr. Cooney. Mr. Cooney is with the**
11 **firm of Cooney & Conway, correct?**

12 A. That's my understanding,
13 yes.

14 **Q. How many clients does**
15 **Cooney & Conway have with asbestos claims**
16 **against Grace, to your knowledge?**

17 **MR. LIESEMER:** Object to
18 the form.

19 MS. HARDING: Objection
20 just because of the relevance, but
21 go on.

22 A. I don't know.

23 **Q. Would your answer be the**
24 **same for the other gentlemen?**

1 A. Yes.

2 **Q. The TAC members, there's**
3 **four individuals listed there. They were**
4 **selected by the ACC, correct?**

5 A. That is my understanding,
6 yes.

7 **Q. And the ACC is made up of a**
8 **collection of asbestos personal injury**
9 **claimants, the actual committee,**
10 **correct?**

11 **MS. HARDING:** Object to the
12 form.

13 A. That is my understanding.

14 **Q. Is it your understanding**
15 **that those individual asbestos claimants**
16 **delegate their responsibilities as ACC**
17 **members to their personal injury**
18 **counsel?**

19 A. It's my understanding that
20 their counsel often act on the claimants'
21 behalf in connection with the business of
22 the ACC.

23 **Q. Okay.**

24 A. Whether there's any

PP:
Obj:
R;
BE;
F

PP:
Obj:
R;
BE;
F

PP:
Obj:
R;
BE;
F

PP's Obj:

R; BE; F

Page 62

17 (Pages 62 to 65)

Page 64

PP's Obj:
R;
BE;
F

1 delegation, I wouldn't know.
2

3 Q. Okay. Does each of the
4 firms that's listed on pages 43 and 44 --
5 just for the record, Baron & Budd, PC;
6 Cooney & Conway; Motley Rice, LLC and
7 Weitz & Luxenberg -- do each of those
8 firms have a client who's a member of the
9 ACC?

10 A. I don't recall.
11

12 Q. What do you understand to
13 be the role of the asbestos PI T-A-C, or
14 TAC, in connection with the Asbestos PI
15 Trust?

16 MS. HARDING: Object to the
17 form of the question.
18

19 A. To provide advice to the
20 Trust with respect to the matters set
21 forth in the Trust agreement and the
22 TDP.

23 Q. Do they owe any fiduciary
24 duties to -- in their role as members of
the TAC?

25 MS. HARDING: Objection to
26 form.
27

28 MR. LIESEMER: Object to
29 form.
30

31 MS. HARDING: Calls for a
32 legal conclusion.
33

34 A. I don't know. Offhand, I
35 could look it up in the documents to see
36 if the documents ascribe such a duty to
37 them.

38 Q. Why don't you look at
39 Section 5.2.

40 A. Of which?

41 Q. The Trust agreement.

42 MS. HARDING: So Exhibit 2
43 of the Plan but Exhibit 6?

44 MR. BROWN: Correct.

45 THE WITNESS: Finke Exhibit

46 6.

47 Q. Does Section 5.2 refresh
48 your recollection as to whether the
49 members of the TAC have any fiduciary
50 duties in connection with their role as
51 TAC members?

52 A. Yes.

53 Q. Okay. And they do,

1 correct?
2

3 A. Yeah, well, specifically
4 Section 5.2 states that "the members of
5 the TAC shall serve in a fiduciary
6 capacity representing all holders of
7 present PI Trust claims."

8 Q. Okay. Do you have any
9 further understanding as to what the
10 nature of the fiduciary duties is that
11 they owe to all holders of present PI
12 Trust claims?

13 MS. HARDING: Object to
14 form.
15

16 A. I'm afraid I do not
17 understand your question.
18

19 Q. I'll try to rephrase it
20 then.

21 What are the fiduciary duties that
22 the TAC members owe to holders of PI Trust
23 claims?

24 MR. LIESEMER: Object to
form.
25

26 MS. HARDING: Same
27 objection.
28

Page 65

1 MR. LEWIS: I object as to
2 foundation.
3

4 A. I am not able to identify
5 specific duties. As a fiduciary they're
6 obligated to act in the best interests of
7 the holders of present PI Trust claims.

8 Q. And when you say holders,
9 you mean all holders of present --

10 A. Yes.

11 Q. -- PI Trust claims?

12 A. Yes.

13 Q. And all holders includes
14 holders of PI Trust claims that are not
15 clients of TAC members' respective law
16 firms, correct?

17 A. It includes them, yes.

18 Q. Now, in the role of
19 personal injury counsel for their
20 individual clients, they have a separate
21 set of fiduciary duties, correct?

22 MS. HARDING: Object to
23 form and also calls for a legal
24 conclusion and outside the scope of
the designation of this 30(b)(6)

PP's Obj:
R;
BE;
FPP's
ctr

1 witness, I believe, but...

2 MR. LIESEMER: Join in the
3 objections.

4 THE WITNESS: I'm sorry.
5 Can you read the question again?

6 (The reporter reads the
7 pending question.)

8 A. They have fiduciary
9 obligations to their clients, yes.

10 Q. Okay. And to your
11 knowledge, do those fiduciary duties
12 differ from -- that is, the duties that
13 they owe to their respective clients --
14 differ from the fiduciary duties that each
15 of these TAC members has in their role as
16 a TAC member?

17 MR. LIESEMER: Objection to
18 form.

19 MS. HARDING: Same
20 objection as I had to the previous
21 question.

22 A. In general, they owe the
23 same obligation to fulfill the role of a
24 fiduciary, which is to act in the best

1 interests of their clients. Whether there
2 are specific duties in their role as TAC
3 members that are different from specific
4 duties in their role as counsel
5 representing their clients, I don't
6 know.

7 Q. Do you have an
8 understanding as to how the TAC members
9 will deal with the situation where the
10 best interests of their individual clients
11 differs from the best interest of all
12 holders of present PI Trust claims?

13 MS. HARDING: Object to
14 form.

15 MR. LIESEMER: Objection to
16 form.

17 MS. HARDING: Calls for
18 speculation.

19 A. I don't know.

20 Q. Is there any mechanism in
21 any of the Plan documents, to your
22 knowledge, that addresses that issue?

23 MS. HARDING: Object to
24 form.

PP's
Ctr

1 A. I am not aware of any.
2 Q. Okay. Now, you're familiar
3 with the term "PI Trust claims" as it's
4 used in the Trust agreement, correct?

5 MR. LIESEMER: Objection to
6 form.

7 A. Yes, I am.

8 Q. And if you look at Footnote
9 1 to the Trust agreement, if you would,
10 Footnote 1 says that what is defined as
11 asbestos PI claims in the plan will be
12 referred to as PI Trust claims in the
13 Trust agreement, correct?

14 A. Yes.

15 Q. And are you familiar with
16 the scope of the defined term "asbestos PI
17 claims" as it appears in the Plan?

18 A. Yes.

19 Q. I'm correct, am I not, that
20 it includes the term "indirect PI Trust
21 claim"?

22 A. Yes.

23 Q. So based on that
24 definitional connection, is it fair to say

1 that Mr. Weitz, Mr. Cooney, Mr. Budd
2 and -- I missed someone -- Mr. Budd, Mr.
3 Cooney, Mr. Rice and Mr. Weitz are
4 fiduciaries to the holders of indirect PI
5 Trust claims?

6 MS. HARDING: Object to
7 form.

8 MR. LIESEMER: Join in the
9 objection.

10 A. I believe that to be
11 correct.

12 Q. Are you generally familiar
13 with my client, OneBeacon's, contractual
14 indemnity claims?

15 A. No.

16 Q. Okay, we'll get to that
17 later then.

18 MR. BROWN: Let's mark this
19 next.

20 (First Amended Joint Plan
21 of Reorganization marked for
22 identification as Exhibit
23 Finke-8.)

24 Q. Mr. Finke, you have before

PP's
Obj:
R; BE
F

PP's
Obj:
R; BE;
F

PP's
Obj:
R; BE

PP's Obj:

R; BE

Page 70

19 (Pages 70 to 73)

Page 72

1 you now what has been marked as Exhibit 8
 2 to this deposition and what is Exhibit 1
 3 to the Exhibit Book. First question is:
 4 Would you identify the document, please?

5 A. Yes. I think Exhibit 8 is
 6 the First Amended Joint Plan of
 7 Reorganization that was filed by Grace and
 8 its co-proponents.

9 Q. Okay.

10 A. And the date is February --
 11 date on the document is February 27,
 12 2009.

13 Q. Okay. Have you reviewed
 14 this document in its entirety?

15 A. Yes.

16 Q. How many times?

17 MS. HARDING: You mean in
 18 its entirety how many times?

19 MR. BROWN: Well, let's
 20 start-up with that question.

21 A. Interpreting review as
 22 meaning a detailed word-for-word reading
 23 of the entire document, I would say
 24 once.

1 MS. HARDING: No, it's
 2 not.

3 MR. BROWN: Okay. It's
 4 just --

5 MS. HARDING: It's just an
 6 objection that...

7 A. I'm sure that I do not
 8 understand the annex or annexes that I
 9 believe relate to tax issues.

10 MS. HARDING: I guess --
 11 are you asking him in his personal
 12 capacity?

13 MR. BROWN: I don't think
 14 he's here in his personal capacity.
 15 I think he's here in his capacity
 16 as a designee for W.R. Grace or for
 17 the debtors.

18 MS. HARDING: Okay. Are
 19 you asking him if there's anybody
 20 at W.R. Grace that has an
 21 understanding of different
 22 provisions of the Plan as lawyers
 23 and --

24 MR. BROWN: I think he's

1 Q. Okay. And how many times
 2 have you partially reviewed the
 3 document?

4 A. Many times.

5 Q. Okay. Do you understand
 6 it?

7 A. I have an understanding of
 8 it. I would not profess to have a
 9 complete understanding of it.

10 Q. Okay. Are there particular
 11 provisions in the Plan that you're quite
 12 certain you don't understand?

13 MS. HARDING: Object to
 14 form and relevance and concern that
 15 we're not going to the seven
 16 hours -- I mean, if you have a
 17 specific question about a specific
 18 provision that you don't understand
 19 as an insured, then I think you
 20 should ask him questions about
 21 that. I think...

22 MR. BROWN: Is that an
 23 instruction not to answer the
 24 question?

1 here to testify about the operation
 2 of the Plan. I think that was --
 3 isn't he? So my question is
 4 what --

5 MS. HARDING: He's here to
 6 answer questions to help you
 7 understand the Plan.

8 MR. BROWN: Barbara, can
 9 we --

10 MS. HARDING: So I think if
 11 there are questions that you don't
 12 understand, I think you should ask
 13 him those.

14 MR. BROWN: I would like to
 15 know whether there are particular
 16 provisions in the Plan that the
 17 witness can identify that he is not
 18 familiar with or that he doesn't
 19 understand.

20 MS. HARDING: Well, I think
 21 he's asked and answered, so...

22 A. Yes, for myself there are
 23 provisions that I do not understand, such
 24 as the tax annexes. This --